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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ETOPIA EVANS, *et al.*,

Plaintiffs,

v.

ARIZONA CARDINALS FOOTBALL CLUB,
LLC, *et al.*,

Defendants.

Civil Case No.:3:16-CV-01030-WHA

**NOTICE OF MOTION AND MOTION TO
DISMISS SECOND AMENDED
COMPLAINT AND FOR SUMMARY
JUDGMENT ON THE INDIVIDUAL
CLAIMS OF CERTAIN PLAINTIFFS**

Date: April 27, 2017

Time: 8:00 a.m.

Dept: Courtroom 8

Judge: Honorable William Alsup

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**NOTICE OF MOTION AND MOTION TO DISMISS
AND FOR SUMMARY JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 27, 2017, at 8:00 a.m., or as soon thereafter as available, in the courtroom of the Honorable William Alsup, located at 450 Golden Gate Avenue, Courtroom 8, 19th Floor, San Francisco, California 94102, Defendants Arizona Cardinals Football Club, LLC, *et al.*, will and hereby do move for an order dismissing with prejudice the claims of certain plaintiffs asserted in the Second Amended Complaint (Dkt. No. 189) and/or granting defendants summary judgment on certain claims based on the statute of limitations.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the accompanying Declaration of Benjamin C. Block and exhibits thereto, the pleadings and papers on file in this action, any other such matters of which the Court may take judicial notice, the arguments of counsel, and any other matter that the Court may properly consider.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In its February 3 Order granting in part defendants' motion to dismiss the Amended Complaint (Dkt. No. 168) ("February 3 Order"), this Court gave plaintiffs one final opportunity "to plead their best case" on their misrepresentation and concealment claims. *Id.* at 19. In doing so, this Court provided clear direction on what would be required for that pleading to survive a motion to dismiss – direction that plaintiffs have largely ignored. Rather than pleading specific facts that would support the specific claims of these thirteen plaintiffs, the new allegations in the Second Amended Complaint ("SAC") relate primarily to claims dismissed with prejudice (plaintiffs' RICO and conspiracy claims) or to unasserted claims of retired players who are not plaintiffs in this lawsuit. Indeed, plaintiffs' new allegations seem more focused on garnering publicity than on curing the deficiencies identified by the Court, notwithstanding counsel's assurance at the January 26 hearing that "[w]e can amend this to any degree of particularity you want at this point." Tr. at 40. The few new facts that have been alleged *relating to the plaintiffs* still fall far short of satisfying the pleading standard. As demonstrated in Part I below, plaintiffs' "best case" is far from good enough; those claims should now be dismissed with prejudice.

Independent of the deficiencies in the pleading, the vast majority of plaintiffs' claims are now subject to summary judgment on statute of limitations grounds. In prior rulings, the Court expressly recognized that plaintiffs' claims might be subject to summary judgment on the basis of the statute of limitations. *See* Dkt. No. 89 at 7-8; Dkt. No. 168 at 20. The record is now ripe for such a motion. As demonstrated in Part II below, it is plain on the undisputed evidentiary record that a large majority of plaintiffs' claims accrued more than three years before this lawsuit was filed and are therefore time-barred. Indeed, that record discloses that most of these plaintiffs – often represented by the same counsel who represent them here – filed workers' compensation or other claims well before May 2012 seeking to recover for the very same injuries for which they seek recovery here.

ARGUMENT

I. Plaintiffs Have Failed To State Their Claims with Particularity.

The standard for evaluating the SAC under Rule 12 is the standard applied by the Court in its February 3 Order. Under Rule 9(b), a plaintiff alleging fraud must "state with particularity the circumstances" of the alleged fraudulent conduct. *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010). Applying this standard, the Court must again consider "whether the amended complaint sufficiently alleges deceit, reliance, and proximate causation." February 3 Order at 11. This rule of particularity applies separately with respect to *each plaintiff's* claims against *each defendant* – plaintiffs may not merely "lump multiple defendants together." *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007). As demonstrated below, the SAC still fails to satisfy these fundamental pleading standards with respect to plaintiffs' previously dismissed claims. Those claims should now be dismissed with prejudice.

A. The Court's February 3 Order Established the Standard for Pleading with Particularity in this Case.

In its February 3 Order, the Court held that plaintiffs' intentional misrepresentation and concealment claims "must satisfy the heightened pleading requirements of Rule 9(b)" and evaluated "whether the amended complaint sufficiently alleges deceit, reliance, and proximate causation...." *Id.* at 11. The Court noted defendants' argument (which plaintiffs had not seriously disputed) that plaintiffs had failed to plead with particularity "how (1) any statements or omissions made by club personnel

1 about the drugs used were false[,] ... (2) [that] any disclosures regarding the risks or side effects of the
 2 drugs used would have altered plaintiffs' decision to take such drugs[,] ... or (3) [that] any concealed
 3 side effects of the drugs used caused plaintiffs' alleged injuries." *Id.* at 11. The Court identified a
 4 "subtler" theory of misrepresentation based on the allegation that defendants had "represented they
 5 cared about and prioritized players' health and safety, but in various ways, drove players to return to
 6 play at the cost of their health or safety." *Id.* at 12. Even with respect to that theory, the Court found
 7 that most of plaintiffs' allegations failed to satisfy the Rule 9(b) standard.¹

8 It was not sufficient, for example, for plaintiff Wunsch merely to allege that an unidentified
 9 doctor for an unidentified club at an unidentified time had given his ankle a shot of Hylagan instead of
 10 resting him. *Id.* at 16-17. Also insufficient was plaintiff King's allegation that he had received
 11 "hundreds of pills" to "numb the pain and play," without specifying any particular injuries he sustained
 12 as a result of receiving such medications, when this happened, or who was involved. *Id.* at 17.

13 The Court identified only eight instances in which it concluded that a plaintiff had pled with
 14 particularity specific conduct by a specific defendant that appeared to be "contrary to [the]
 15 representations" about the priority of player health and that allegedly injured him. *Id.* at 14-16. In each
 16 instance, the Court found that the Amended Complaint had asserted *specific facts* alleging: (1) that on a
 17 specific occasion, an identified member of a club's staff had acted in a manner contrary to the health of a
 18 plaintiff (through specific alleged acts that either misdiagnosed an injury as less serious than it was or
 19 that pressured the player to return to play following an injury when doing so was inconsistent with
 20 proper medical treatment), and (2) that the player had suffered additional injury as a result of this
 21 premature return to play. The only individual allegation found to pass muster with a different fact

22
 23 ¹ The remainder of this Motion assumes, *arguendo*, that this theory is still available to plaintiffs.
 24 However, the SAC *omits* the allegations, found at paragraphs 105-108 of the FAC and emphasized in the
 25 February 3 Order, that "[t]he Clubs have uniformly represented that they provide players with the best
 26 health care available" and that "[t]he clubs also insist that their medical professionals prioritize the
 27 players' health." Also omitted are the allegations – also highlighted in the Court's Order – that when
 players asked about side effects of medications they were given, they received responses such as "don't
 worry about them," they are good for you," or "maybe some bruising." See February 3 Order at 2; FAC
 ¶¶ 105-108.

1 pattern was plaintiff Carreker's allegation that two clubs had given him such a large quantity of anti-
 2 inflammatory drugs that he had built up a resistance to those drugs that, in turn, impeded his ability to
 3 use them in treating a heart condition. Although other plaintiffs alleged that they had been given large
 4 quantities of medications, only Carreker alleged *facts* to suggest proximate cause of a specific injury.

5 The Court emphasized that "a defendant club should only have to defend against claims pled
 6 properly against it." *Id.* at 17. Accordingly, the Court dismissed all claims other than specific claims
 7 against eight defendants that it found to be adequately pled. *Id.* Plaintiffs were given leave to amend
 8 their misrepresentation and concealment claims one final time "to plead their best case." *Id.* at 19.

9 **B. The New Allegations of the Second Amended Complaint About Matters Unrelated
 10 to the Claims of the Named Plaintiffs Do Not Remedy the Deficiencies Identified by
 11 the Court's February 3 Order.**

12 The SAC makes no serious effort to meet the Rule 9(b) standard or to add allegations of the type
 13 that this Court found necessary. Instead, the majority of the new allegations address documents and
 14 testimony relating, *not* to the treatment of any named plaintiff, but rather to plaintiffs' theory that
 15 defendants had violated federal regulatory statutes concerning the handling, transportation, and storage
 16 of prescription drugs. The Court has already dismissed with prejudice the RICO claim that these
 17 allegations were previously offered to support. It also rejected plaintiffs' argument that an intentional
 18 misrepresentation or concealment claim could rest on a failure to inform players of such violations,
 19 which otherwise were not alleged to have done them any harm. February 3 Order at 11-12, 17. As the
 20 Court pointed out, it would "strain[] credulity" to suggest that any plaintiff's alleged injuries were
 21 proximately caused by a failure to disclose, for example, that provision of a dose of medication by a
 22 trainer (rather than directly by a doctor) would violate the Controlled Substances Act – a suggestion that
 23 was, in any event, wholly unsupported by the complaint. *Id.* at 12. None of the new allegations on such
 24 subjects ties to any injury allegedly suffered by any of the plaintiffs in this case. *See* SAC ¶¶ 2-11, 88-
 25 96, 100, 136, 142-45, 184-96, 214-25, 227-28, 235-36, 240, 243-44, & Ex. F.²

26 _____
 27 ² The SAC's four other new exhibits similarly do nothing to cure the pleading deficiencies in plaintiffs'
 28 intentional misrepresentation and concealment claims. Exhibit A is simply a chart identifying the games
 in which plaintiffs played – and in many instances did not play (as indicated by a "DNP") – during their
 (continued...)

1 Nor is plaintiffs' new pleading bolstered by allegations about experiences of *other* retired NFL
 2 players. Many such allegations are included within the same paragraphs as allegations concerning
 3 individual plaintiffs, creating the impression that the *plaintiff*-specific allegations are more extensive
 4 than they actually are. *See, e.g.*, SAC ¶ 250. But none of these allegations has any connection to the
 5 claims of any of the thirteen plaintiffs. To survive dismissal, plaintiffs must adequately allege their *own*
 6 claims; the potential claims of putative class members have no bearing on that question. *See Kamath v.*
 7 *Robert Bosch LLC*, 2014 WL 2916570, at *5 n.4 (C.D. Cal. June 26, 2014) (court does not consider
 8 allegations pertaining to putative class members on motion to dismiss, as named plaintiff must
 9 adequately state claim for himself) (citing *Lierboe v. State Farm Mut. Auto. Ins. Co.*, 350 F.3d 1018,
 10 1022 (9th Cir. 2003); *see also Parrish v. Nat'l Football League Players Ass'n*, 534 F. Supp. 2d 1081,
 11 1093-94 (N.D. Cal. 2007) (misrepresentation claims not sufficiently pled based on allegations that
 12 putative class members relied on representations where plaintiffs did not allege that they themselves
 13 saw, heard, and relied on the statements).

14 **C. Plaintiffs' New Allegations Fail To State a Claim.**

15 Most of the dismissed allegations of individual plaintiffs against specific clubs are essentially
 16 unchanged from plaintiffs' prior pleading; they therefore should be dismissed, now with prejudice, for
 17 the same reasons that this Court dismissed those claims in the February 3 Order. Even where additional
 18 facts have been alleged, those allegations are insufficient to rescue those claims in all but one instance.³

19 Exhibit A to this Motion provides a summary table that identifies the clubs against which each
 20 plaintiff has offered allegations, with citations to the pertinent paragraphs of the SAC. Those allegations
 21 are discussed further below, beginning with the claims for which the allegations of the SAC are not

23 careers. Exhibits B, C, and D refer to the number of certain medications allegedly provided by the Colts
 24 in 2004, the Jets in 2004-09, and the Steelers in 2013; no plaintiff played on any of those teams in those
 25 years. *See also* FAC ¶¶ 120-23.

26 ³ Plaintiff Massey has supplemented his claim against the New Orleans Saints to include allegations
 27 concerning an ankle injury that likely satisfy the pleading standard applied by the Court in its February 3
 Order. Defendants accordingly do not seek dismissal of that particular claim, although they do seek
 28 summary judgment on that claim on statute of limitations grounds. (See pp. 21-22 below.)

1 materially different from those of the prior complaint and then addressing the claims as to which
 2 plaintiffs have made an effort to allege additional facts.⁴

3 **1. The Court Should Dismiss with Prejudice Claims As To Which There Has
 4 Been No Material Change in the Second Amended Complaint**

5 For the claims of many of the plaintiffs against various defendants, the SAC presents no material
 6 changes to allegations that this Court previously found to be insufficiently pled.

7 For example, in the prior complaint, plaintiff Sadowski offered the following allegation against
 8 the Kansas City Chiefs:

9 While playing in the NFL, Troy Sadowski received hundreds of pills from
 10 trainers and injections from doctors of Medications. During his time with
 11 each of his Clubs, pills were available from trainers and assistant trainers
 12 upon request. He was either handed the pills or received them in
 13 envelopes. He also received injections of Toradol and Cortisone from
 14 Club doctors. The Toradol injections were given prophylactically before
 15 every game. Mr. Sadowski was never told of the side effects of any of
 16 these drugs. In fact, he was told by a number of trainers that Toradol was
 17 not damaging to his long-term health. He never used a painkiller, anti-
 18 inflammatory or sleep aid before signing his first contract with a Club. Mr.
 19 Sadowski's experience with these Medications was substantially similar
 20 with each Club for whom he played.

21 FAC ¶ 229. Sadowski further alleged that he was provided with Tylenol-Codeine #3 in the visitors'
 22 locker room following a game in Tampa Bay. *Id.* ¶ 303.

23 This was among the many claims that were dismissed in the February 3 Order. The allegations
 24 of the SAC add no new material allegations, much less particularized allegations of fact. Sadowski's
 25 current allegation against the Chiefs is as follows:

26 While playing for the Kansas City Chiefs during the 1991 season, named
 27 Plaintiff Troy Sadowski received and consumed enormous quantities of
 28 pain-numbing and anti-inflammatory medications at the Chiefs' training

24 ⁴ This discussion does not separately address clubs for which a plaintiff played but against which he
 25 otherwise offers no allegations. For example, plaintiffs King and Killings played for the Cleveland
 26 Browns (SAC ¶¶ 18, 38) but the SAC offers no allegations by either plaintiff of any kind against the
 27 Browns. Paragraph 253, which presents plaintiffs' "best case" substantive allegations against the
 28 Browns, offers only allegations relating to plaintiff Harris (who actually played for a *different* defendant,
 as discussed in note 7 below) and two non-plaintiff putative class members.

1 facility, home stadium and during away games, all of which he received
 2 from Chiefs' team doctors or trainers, including but not limited to trainer
 3 David Kendall, who failed to provide a prescription when one was
 4 necessary or adequate directions for the medications' use, including
 5 adequate warnings of uses that have potentially dangerous health
 6 consequences. The medications were provided to him for the sole purpose
 7 of enabling him to practice and play through pain. Mr. Sadowski now
 8 suffers from the injuries described above, which he directly attributes to
 9 the injuries he suffered in the NFL that were masked by the Medications,
 10 or the Medications themselves, provided to him by the Clubs for whom he
 11 played.

12 SAC ¶ 261.

13 Apart from some reorganization and minor rewording, the only difference in Sadowski's claim
 14 against the Chiefs (and numerous others like it) consists of the addition of new boilerplate allegations.
 15 For example, each plaintiff now asserts that "[t]he medications were provided to him for the sole
 16 purpose of enabling him to practice and play through pain." *See, e.g., id.* This allegation simply states
 17 the unexceptional proposition that medications were provided to injured players to treat their injuries
 18 with the goal of assisting them to return to work. Standing alone, it does not suggest wrongdoing, much
 19 less assert a particularized allegation of concealment or intentional misrepresentation.

20 Similarly unavailing are plaintiffs' new boilerplate allegations that each of them "directly
 21 attributes [his current injuries] to the injuries he suffered in the NFL that were masked by the
 22 Medications, or the Medications themselves, provided to him by the Clubs for whom he played." *E.g.,*
 23 SAC ¶ 261.⁵ This conclusory allegation, standing alone (as it generally does), is bereft of specific *facts*
 24 tying any particular wrongful conduct of any particular defendant to any particular injury. As an
 25 allegation of proximate cause, it is insufficient to satisfy even the standards of Rule 8, much less those of

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⁵ Confusingly, this boilerplate often refers to "foregoing ... injuries" or "injuries described above." *See, e.g., SAC ¶¶ 246, 250 (Lofton).* Yet in many cases, there is no "foregoing" or "above" discussion that offers additional information about injuries of the plaintiff at issue. For example, paragraph 33, referring to plaintiff Lofton, alleges "damage to [unidentified] internal organs and the muscular/skeletal injuries discussed above." No injuries to Lofton are "discussed" anywhere "above" paragraph 33; nor is there discussion, let alone mention, anywhere else in the SAC of "internal organ injuries" allegedly suffered by him. Paragraph 246, which contains the most extensive discussion of Lofton's alleged injuries (and offers the boilerplate language discussed above), alleges only that he suffered muscular/skeletal injuries.

1 Rule 9(b). *See Laine v. Wells Fargo Bank, N.A.*, 2014 WL 793546, at *6 (N.D. Cal. Feb. 26, 2014)
 2 (rejecting fraud claim where, *inter alia*, plaintiff failed to plead facts establishing that alleged fraud was
 3 proximate cause of her alleged damages).⁶ Moreover, because all but one plaintiff asserts allegations
 4 against multiple defendants, this boilerplate allegation once again improperly “lump[s] multiple
 5 defendants together.” *Swartz*, 476 F.3d at 764-65.

6 Equally unavailing is the rewording of the allegations of Sadowski and many other plaintiffs to
 7 offer a standardized assertion that each plaintiff received “enormous quantities” of medications. This is
 8 a transparent effort to mimic the wording used in the allegations of plaintiff Carreker that the Court
 9 previously found sufficient. *See* February 3 Order at 14-15. But what allowed Carreker’s claim to
 10 proceed was not reference to “enormous quantities”; other plaintiffs similarly alleged that they had
 11 received medications in large quantities. *See id.* at 17 (finding insufficient King’s allegations that he had
 12 received “hundreds of pills”). Rather, Carreker alleged *facts* addressing *proximate causation* of a
 13 specific alleged injury. No other plaintiff has offered similar factual allegations.

14 Each of the claims listed below follows the same pattern and similarly fails to offer
 15 particularized allegations of *fact* beyond those found insufficient as pled in the prior complaint. For the
 16 convenience of the Court, the allegations provided previously and those in the SAC are reproduced side-
 17 by-side in Exhibit B to this motion.

18 **Goode/Indianapolis.** *Compare* SAC ¶ 259 with FAC ¶¶ 114, 231-232, 303.

19 **Killings/San Francisco.** *Compare* SAC ¶ 273 with FAC ¶¶ 114, 261.

20 **Lofton/Carolina.** *Compare* SAC ¶ 250 with FAC ¶¶ 114, 250.

21
 22 ⁶ *See also Citibank, N.A. v. K-H Corp.*, 968 F.2d 1489, 1496-97 (2d Cir. 1992) (holding conclusory
 23 assertion that “there is a direct causal link between defendants’ fraud and [plaintiff’s] losses” insufficient
 24 to plead proximate cause in fraud claim); *Scotten v. First Horizon Home Loan Corp.*, 2012 WL
 25 3277104, at *6 (E.D. Cal. Aug. 9, 2012) (observing that plaintiffs “include a laundry list of damages ...
 26 that were allegedly the result of defendants’ negligence” but “offer no more than the conclusory
 27 allegation ... that the alleged negligence was ‘a direct and proximate cause’ of these damages,” holding
 28 that such “conclusory allegations and formulaic recitations of elements are insufficient to satisfy federal
 pleading standards”); *Petrosyan v. AMCO Ins. Co.*, 2012 WL 12884920, at *5 (C.D. Cal. Oct. 9, 2012)
 (dismissing fraud claim where plaintiff failed to allege facts showing that her damages were proximately
 caused by reliance on the alleged fraudulent misrepresentations).

1 **Lofton/New England.** *Compare SAC ¶ 265 with FAC ¶¶ 114, 250.*

2 **Massey/Arizona.** *Compare SAC ¶ 246 with FAC ¶¶ 114, 225, 228, 303.*

3 **Massey/Jacksonville.** *Compare SAC ¶ 260 with FAC ¶¶ 114, 225, 303.*

4 **Massey/New York Giants.** *Compare SAC ¶ 267 with FAC ¶¶ 114, 225, 303.*

5 **Sadowski/Atlanta.** *Compare SAC ¶ 247 with FAC ¶ 229-230.*

6 **Sadowski/Kansas City.** *Compare SAC ¶ 261 with FAC ¶¶ 229, 303.*

7 **Sadowski/New York Jets.** *Compare SAC ¶ 268 with FAC ¶ 229.*

8 **Sadowski/Pittsburgh.** *Compare SAC ¶ 271 with FAC ¶ 229.*

9 **Wunsch/Tampa Bay.** *Compare SAC ¶ 275 with FAC ¶¶ 114, 244, 303.*

10 The absence of any material change to these allegations compels the conclusion that these claims have
11 not been pled with particularity and should now be dismissed with prejudice.

12 **2. The Court Should Also Dismiss With Prejudice Claims That Have Been
13 Amended But That Still Fail To Cure the Pleading Inadequacy.**

14 The claims of some of the individual plaintiffs against some clubs have been supplemented or
15 amended, but without the addition of facts sufficient to satisfy the pleading standard of Rule 9(b). None
16 of these plaintiffs offers any new particularized allegations of “deceit, reliance, and proximate
17 causation.” February 3 Order at 11. Some plaintiffs offer new allegations about injuries they suffered in
18 games for which they received “medications” – but without any allegation that the medical treatment
19 they received caused them injury. Some now allege that they were “pressured” to play following game
20 injuries but, again, fail to allege that doing so caused them harm. And some new allegations are simply
21 irrelevant to the claims asserted.

22 **Evans/Baltimore.** Evans’s allegations against the Ravens, previously found insufficient, have
23 been rephrased to quote the deposition testimony of his widow, but the only new fact alleged is that
24 Evans was given medications by the Ravens’ staff *after he retired from football* and while working as a
25 sideline reporter. *Compare FAC ¶¶ 114, 223 with SAC ¶ 248.* These medications were obviously not
26 provided to enable or pressure Evans to play football and add nothing to any claim of misrepresentation
27 or concealment.

1 **Evans/Minnesota.** Evans’ allegations against the Vikings, also found insufficient previously,
 2 have been rephrased to quote the testimony of Evans’ widow, Etopia Evans, but with no change in
 3 substance. *Compare* SAC ¶ 264 with FAC ¶¶ 114, 223, 303. The only new fact alleged is that at some
 4 unspecified time *Etopia* Evans was given an antibiotic by a team doctor. SAC ¶ 264.

5 **Graham/Pittsburgh.** Graham has added a new allegation that the first time he received an anti-
 6 inflammatory injection, the team doctor did not tell him about “potential side effects.” SAC ¶ 271.
 7 Unique among the plaintiffs, he now alleges that he would have refused the injection had he been told
 8 about side effects. *Id.* Once again, however, the SAC fails to allege any specific side effects that should
 9 have been disclosed to him; nor does Graham assert that he suffered any such side effects. To the
 10 contrary, the only injuries he alleges are muscular/skeletal injuries and “pain” (SAC ¶¶ 37, 271), neither
 11 of which is alleged to be a “side effect” of any medication. No facts are alleged that indicate any causal
 12 connection between the particular medications he received and any injury he suffered. Graham also
 13 alleges that he was “pressured” by a coach to play in a playoff game “despite a high ankle sprain that
 14 was causing him significant pain and limiting his effectiveness.” *Id.* ¶ 271. However, he does not allege
 15 that this caused him any new injury; he does not even allege that he was given medications to enable
 16 him to play that day. Otherwise, his allegations are substantially the same as those that this Court
 17 deemed insufficient. *Compare* SAC ¶ 271 with FAC ¶¶ 114, 259, 303.

18 **Graham/Chicago.** Graham’s allegations against the Bears were previously found insufficient.
 19 The SAC now quotes his deposition testimony that players were generally “pressured to play.” SAC
 20 ¶ 251. It does not, however, identify any occasion when *he* was pressured by the Bears to play
 21 notwithstanding an injury that should have kept him off the field, much less any such occasion when he
 22 suffered a new or aggravated injury as a result. Otherwise, his allegations are substantially the same as
 23 those that this Court deemed insufficient. *Compare* SAC ¶ 251 with FAC ¶¶ 259, 303. He still offers no
 24 particularized allegations of misrepresentation or concealment that proximately caused him injury.

25 **Graham/New York Jets.** Graham’s minimal allegations against the Jets (*see* FAC ¶¶ 259, 303)
 26 have been supplemented with an allegation that on one unidentified occasion unidentified Jets “trainers
 27 and doctors” told him that the Jets did not have enough receivers to play in a game and encouraged him
 28 to play. SAC ¶ 268. He does not allege that he played in that game or that he suffered injury in doing

1 so. He also alleges that the Jets coaches “looked down on [him]” because of a turf toe injury and
 2 pressured him to play. *Id.* Again, however, he does not allege any occasion when team doctors cleared
 3 him to play when they should not have done so; nor does he allege any injury suffered on any such
 4 occasion. Nor does he offer any particularized allegations of misrepresentation or concealment that
 5 proximately caused him injury.

6 **Graham/Philadelphia.** The only new allegation that Graham offers against the Eagles is that if
 7 he had “a strain or a groin … and I had to get an injection to go through and finish the game or start the game and finish …, I was pressured to do that, just the sense of the pressure because of the situation that
 8 was going on.” SAC ¶ 270. No specific incident of pressure to play or associated receipt of medication
 9 is alleged; no persons involved in conveying such “pressure” are identified; nor is there any allegation
 10 that such “pressure” caused him injury. Otherwise, his allegations are substantially the same as those
 11 previously found inadequate. *Compare id. with* FAC ¶ 259. There are still no particularized allegations
 12 of misrepresentation or concealment that was a proximate cause of injury to him.

13 **Harris/[Baltimore].** Harris’s allegations against the Ravens⁷ were also found insufficient
 14 previously. The SAC elaborates on his allegation that he began suffering a rapid heartbeat during his
 15 time with this team. *Compare SAC ¶ 253 with* FAC ¶¶ 114, 253, 303. But he does not claim causation,
 16 i.e., that medications provided by this defendant caused or aggravated his condition. And although he
 17 alleges that he received medication for the condition and was told that he could continue to practice, he
 18 does *not* allege that this was improper medical advice, much less that it caused him any injury.

19 **Harris/Dallas.** Although the SAC now describes Harris’s treatment by the Cowboys after he
 20 hurt his back, *see* SAC ¶ 254; *compare* FAC ¶¶ 114, 253, he does not allege that this treatment caused
 21
 22

23 ⁷ Although the SAC asserts these allegations against the “Cleveland Browns,” the Browns team for
 24 which Harris played in 1984 moved to Baltimore in 1996 and is now known as the Baltimore Ravens. A
 25 new expansion team, which assumed the “Browns” name, was then awarded for Cleveland in the 1999
 26 season. *See* Exhibit 1 to the accompanying Declaration of Benjamin Block [hereinafter “Block Decl.”].
 27 Should plaintiffs take the position that Harris’s claim is asserted against the (current) Cleveland Browns
 28 rather than the Ravens, the Court should enter summary judgment for the Browns on this basis. No
 plaintiff asserts any claims against the current Cleveland Browns. *See* Exhibit A.

1 him harm. Nor does he allege that he was pressured to return to play earlier than he should have
 2 returned; nor does he identify any injury suffered in any premature return. He still alleges no particulars
 3 of any misrepresentation or concealment that proximately caused him injury.

4 **King/Buffalo.** King's allegations against the Bills were also found insufficient. *See* FAC ¶¶
 5 114, 248, 303. In the SAC, King adds a new allegation that at some point in 2006 he injured his back
 6 and was given narcotics by "team doctors" and "forced back into the game." SAC ¶ 249. He does not
 7 identify who "forced" him or how. Nor does he claim to have suffered any further injury as a result.
 8 Rather, he alleges that he was again injured in the *next* game, but no connection is alleged between the
 9 two injuries. He does not claim that he entered the second game still suffering from the prior injury, that
 10 he was given any medications to "mask" pain from the prior injury, or that he was "forced" to play in
 11 the second game. He alleges that he was treated for the second injury but does not allege that the
 12 treatment was deficient or that he was pressured to return to play before it healed. Although the SAC
 13 alleges that the Bills' trainer "corroborated" King's account in his deposition, it fills none of these gaps.
 14 *See* SAC ¶ 249. King still offers no particularized allegations of "deceit, reliance, and proximate
 15 causation" against this defendant.

16 **King/Tennessee.** King's allegations against the Titans were also found insufficient. *See* FAC
 17 ¶¶ 114, 248, 303. In the SAC, he alleges that he suffered various injuries during the 2007 season and
 18 that on each occasion he was given medications and told to get back into the game. SAC ¶ 276. He
 19 does not, however, allege that any of these injuries was caused or aggravated as a result. He further
 20 alleges that during the 2008 season he hurt his forearm and was given Toradol and pain medications to
 21 mask the pain. *Id.* Again, however, he does not allege that this led to further injury, and he still offers
 22 no particularized allegations of misrepresentation or concealment that proximately caused him injury.

23 **King/Detroit.** The SAC supplements King's prior allegations against the Lions (*see* FAC
 24 ¶¶ 114, 248, 303) with an allegation that in 2009 King was given painkillers to enable him to play after
 25 he separated his shoulder. SAC ¶ 256. However, he does not identify any injury suffered as a result.
 26 Nor does he otherwise offer any particularized allegations of misrepresentation or concealment that
 27 proximately caused him injury.

1 **Killings/Houston.** Killings previously made no specific allegations against the Texans. He
 2 attempts to do so in the SAC, but the allegations provided offer nothing beyond the same general
 3 conclusory boilerplate that the Court previously rejected as inadequate. *See* SAC ¶ 258.

4 **Lofton/Arizona.** Lofton's allegations against the Cardinals were found insufficient. The only
 5 additional allegation in the SAC is that, in general terms, coaches "would try to encourage you to, you
 6 know, tough through it, team needs you, that type of attitude." SAC ¶ 246. This does nothing to cure
 7 the pleading deficiencies of this claim. *Compare id. with* FAC ¶¶ 114, 250.

8 **Sadowski/Cincinnati.** Sadowski's allegations against the Bengals were found insufficient. The
 9 SAC adds an allegation that Sadowski received Toradol shots before every game but identifies no injury
 10 that he is alleged to have suffered as a result. There is also a new reference to Sadowski's testimony that
 11 "trainers will pressure you, get you out of the training room, hey, you been in here too long, get out of
 12 here." SAC ¶ 252. However, there are still no particularized allegations that Sadowski was himself
 13 pressured to play when he should not have done so or that he received substandard treatment for any
 14 injury. *Compare id. with* FAC ¶¶ 114, 229, 303. Nor are there otherwise particularized allegations of
 15 misrepresentation or concealment that proximately caused him injury.

16 **Ashmore/Los Angeles.** Ashmore's allegations refer to the same incident from his time with the
 17 Rams that was referred to in the prior complaint. *See* FAC ¶ 239. His new account of this incident
 18 combines in one place allegations that were previously provided in multiple paragraphs but offers no
 19 new material allegations of fact. *Compare* FAC ¶¶ 114, 234-35, 239 *with* SAC ¶ 262. He still offers no
 20 particularized allegations of misrepresentation or concealment that proximately caused him injury.

21 **Ashmore/Washington.** Ashmore's allegations against the Redskins also reorganize allegations
 22 from the prior complaint, including allegations relating to one incident, but offer no new material facts
 23 that would support a misrepresentation or concealment claim. *Compare* FAC ¶¶ 114, 234-35, 238 *with*
 24 SAC ¶ 277.

25 **Walker/Arizona.** Walker's allegations against the Cardinals were found insufficient. The SAC
 26 quotes Walker's deposition testimony that statements about not "mak[ing] the team in the training
 27 room" and "you're only as good as your last game" were "repeated all the time." SAC ¶ 246. However,
 28 there are still no particularized allegations that Walker was himself pressured to play when he should not

1 have done so or that he received substandard treatment for any injury. *Compare id. with* FAC ¶¶ 114,
 2 264. Nor has he otherwise offered particularized allegations of misrepresentation or concealment that
 3 proximately caused him injury.

4 **D. The Court Should Dismiss With Prejudice Each Plaintiff's Claims Against**
 5 **Defendant Clubs As To Which He Makes No Allegations.**

6 As Exhibit A makes clear, no plaintiff even purports to offer allegations against more than a few
 7 of the defendants. And as the Court observed in its February 3 Order (at 17), “a defendant club should
 8 only have to defend against claims properly pled against it.” *See also Swartz*, 476 F.3d at 764-65
 9 (plaintiffs may not merely “lump multiple defendants together” but must “differentiate their allegations
 10 when suing more than one defendant ... and inform each defendant separately of the allegations
 11 surrounding his alleged participation in the fraud”). Yet both Counts of the SAC are brought on behalf
 12 of “All Plaintiffs Against All Defendants.” SAC at pp. 114, 119. Regardless of the Court’s decision on
 13 the specific allegations made by each plaintiff against particular clubs, the Court should at a minimum
 14 dismiss each plaintiff’s claims against the clubs as to which he makes no such allegations.

15 Plaintiff Goode, for example, offers allegations only against the Indianapolis Colts. *See* SAC
 16 ¶ 259. He does not allege that any other club made a misrepresentation that injured him, concealed
 17 information that it was under a duty to disclose to him, or otherwise harmed him. Even if his allegations
 18 against the Colts were sufficient to state a claim (and they are not), he has plainly made no effort to state
 19 one against any other defendant. Exhibit A to this Motion sets forth a table identifying, for each
 20 plaintiff, the defendants against which that plaintiff offers any specific allegations in the SAC. At a
 21 minimum, the Court should dismiss with prejudice each plaintiff’s claims against all other defendants.

22 * * * * *

23 Plaintiffs have now had multiple opportunities to amend their pleading, and the Court warned
 24 them that the time had come to present their “best case.” February 3 Order at 19. Unlike most litigants,
 25 plaintiffs have had an opportunity to craft a pleading that reflects, not only their own personal
 26 knowledge (which, if they had viable claims, should have been sufficient to address nearly all of the
 27 deficiencies), but also information gleaned from extensive discovery. Plaintiffs’ inadequately pled
 28 claims should now be dismissed with prejudice.

1 **II. In Addition, or in the Alternative, the Court Should Grant Summary Judgment on Claims**
 2 **That Are Time-Barred.**

3 In addition, or in the alternative, this Court should grant summary judgment with respect to
 4 plaintiffs' time-barred claims. The applicable statute of limitations is three years. The playing career of
 5 every plaintiff other than Walker ended more than three years before this suit was brought. Although
 6 plaintiffs *allege* that their claims are for "latent" injuries, undisputed *evidence* – in the form of plaintiffs'
 7 own deposition testimony, medical records, and workers' compensation and disability filings –
 8 demonstrates that the large majority of their claims accrued prior to May 2012 and are therefore time-
 9 barred.

10 **A. The Applicable Limitations Period Is Three Years.**

11 Plaintiffs assert state-law claims under diversity jurisdiction. As plaintiffs filed this suit in
 12 Maryland, that state's choice-of-law rules apply. *See Van Dusen v. Barrack*, 376 U.S. 612, 639 (1964).
 13 Under Maryland law, the statute of limitations is procedural; Maryland's limitations period applies
 14 regardless of which state's substantive law would apply. *See, e.g., Hooper v. Lockheed Martin Corp.*,
 15 688 F.3d 1037, 1046 (9th Cir. 2012). That limitations period is three years. *See* Md. Code Ann., Cts. &
 16 Jud. Proc. § 5-101 ("A civil action at law shall be filed within three years from the date it accrues unless
 17 another provision of the Code provides a different period of time within which an action shall be
 18 commenced."); *see also Moreland v. Aetna U.S. Healthcare, Inc.*, 831 A.2d 1091, 1095 (Md. Ct. Spec.
 19 App. 2003) (intentional misrepresentation claim subject to three-year statute of limitations).⁸

20

 21 ⁸ Section 5-109(a) of the Maryland Code may provide a more restrictive limitations period: "An action
 22 for damages for an injury arising out of the rendering of or failure to render professional services by a
 23 health care provider ... shall be filed within the *earlier* of: (1) Five years of the time the injury was
 24 committed; or (2) Three years of the date the injury was discovered" (emphasis added). The three-year
 25 portion of this provision is materially identical to the three-year period in Section 5-101. *See State v.*
 26 *Copes*, 927 A.2d 426, 438 (Md. Ct. Spec. App. 2007) (observing that Section 5-109 codifies the
 27 discovery rule "judicially engrafted" onto Section 5-101). As plaintiffs' claims are barred under that
 28 three-year rule, this Court need not reach the separate question of whether they also "arise out of" the
 services provided by team doctors and would therefore be barred by the five-year limitation of Section
 5-109(a)(1), which functions essentially as a statute of repose, running from the date the injury occurred
 without regard to when it was discovered. *See, e.g., Piselli v. 75th St. Med.*, 808 A.2d 508, 519 (Md.
 2002).

1 A claim accrues for statute of limitations purposes “when the plaintiff knew or, with due
 2 diligence, reasonably should have known” of his claim. *Doe v. Archdiocese of Wash.*, 689 A.2d 634,
 3 638 (Md. Ct. Spec. App. 1997). Although all of the elements of a claim must be present for a claim to
 4 accrue under this standard, even “trivial” damages will suffice to begin the running of the statute of
 5 limitations. *Id.* There is no exception to the running of the limitations period for plaintiffs who were
 6 “aware of the acts but did not appreciate at the time that they were wrong, or did not realize until years
 7 later that [they were] harmed.” *Id.* at 641.

8 Plaintiffs brought this suit in May 2015. Accordingly, the statute of limitations bars any of their
 9 claims that accrued before May 2012. As this Court recognized in its February 3 Order, plaintiffs’
 10 “specific allegations – that the clubs pressured them to play and gave them medications to continue
 11 playing, that they thus did not fully heal from injuries … – are all of facts plaintiffs knew or should have
 12 known as soon as they occurred.” February 3 Order at 5. The only remaining question regarding
 13 accrual is therefore whether plaintiffs were on notice before May 2012 that they had suffered any injury.

14 The familiar standard of Rule 56 applies. When there is “no ‘genuine issue’ as to the accrual of
 15 the statute of limitations … summary judgment is appropriate.” *Outman v. United States*, 890 F.2d
 16 1050, 1053 (9th Cir. 1989); *see also Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 985-86 (D. Md.
 17 2002) (“If there is no genuine issue of material fact regarding the accrual of a cause of action, a court
 18 may determine the date of accrual as a matter of law.”).

19 **B. Plaintiffs’ Alleged “Discovery” in 2014 of the Theory for Their Claims Is Not
 20 Relevant.**

21 This Court previously denied a motion to dismiss plaintiffs’ claims as time-barred because the
 22 complaint *alleged* that plaintiffs were suffering from “latent” injuries that did not manifest themselves
 23 until shortly before plaintiffs filed this lawsuit. *See* Dkt. No. 89 at 7-8. But undisputed evidence now
 24 proves that prior to May 2012, every plaintiff other than Walker was experiencing ongoing pain in the
 25 same body parts about which he now complains. As explained further below, those undisputed material
 26 facts require a conclusion that the statute of limitations accrued years ago at least for all of these
 27 plaintiffs’ alleged “muscular/skeletal” injuries. *See, e.g., Doe*, 689 A.2d at 639; *Hahn v. Claybrook*, 100
 28 A. 83, 86 (Md. 1917) (cause of action accrued when plaintiffs’ hand began to show discoloration);

1 *S. Md. Oil Co. v. Texas Co.*, 203 F. Supp. 449, 451-52 (D. Md. 1962) (recognizing that in *Hahn*, the
 2 claim accrued in 1908, when the plaintiff first noticed mild discoloration in her hand, not 1913 when that
 3 discoloration had “become serious and permanent”).⁹

4 Critically, plaintiffs have now acknowledged that their complaint’s repeated, boilerplate
 5 averment that no plaintiff “bec[a]me aware that Defendants caused [his] injuries until, at the earliest,
 6 March of 2014” (SAC ¶¶ 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39) refers, not to the discovery of any
 7 “latent” injury, but rather to the fact that no plaintiff had previously thought of the legal theory of
 8 recovery proffered here. Each of these plaintiffs has responded identically, under oath, to an
 9 interrogatory asking for the “facts and circumstances (including the pertinent dates) that first led” him to
 10 “become aware that Defendants caused” his injuries:

11 In March 2014 [Name] began communicating with Plaintiffs’ counsel in
 12 connection with this litigation. At that time, [Name] first became aware
 13 for the first time that the NFL Member Clubs were engaged in a
 14 conspiracy to promote a return to play practice or policy whereby
 15 Medications were unlawfully provided to players in an effort to maximize
 16 revenue at the expense of players’ health and safety. After being provided
 17 with this information, [Name] first understood that the injuries about
 18 which he complains were caused by the NFL Member Clubs’ conspiracy.

19 Block Dec. Exs. 2-13 (Pls.’ Resps. to Interr. No. 16). Those responses confirm that these plaintiffs did
 20 not lack knowledge of the *facts* underlying their claims before March 2014; rather, it was only then that
 21 they first contemplated the conspiracy *theory* advanced unsuccessfully by their counsel in this litigation.

22 That theory does not affect the running of the statute of limitations. Just as with their RICO
 23 claim, which this Court has already dismissed on statute of limitations grounds, plaintiffs’ position
 24 “boils down to arguing that the limitations period could not start running until they not only discovered
 25 that they had suffered injuries … but also stumbled onto a legal theory fitting those facts.” February 3
 26 Order at 7. That position is no more tenable under Maryland law than it is under the federal RICO

27 ⁹ As discussed in more detail below, undisputed evidence also establishes that the majority of plaintiffs’
 28 alleged “organ” injuries also accrued prior to May 2012. However, with the exception of Carreker, the
 29 plaintiffs claiming such injuries have not alleged that any of them was proximately caused by any
 30 alleged misrepresentation or concealment. Those claims may accordingly be dismissed without the need
 31 to reach the statute of limitations question.

1 statute. The statute of limitations accrues when a plaintiff has – or reasonably should have – sufficient
 2 “knowledge of facts,” not “actual knowledge of their legal significance.” *Moreland*, 831 A.2d at 1096
 3 (emphasis omitted). Under Maryland law, plaintiffs are “presumed to have had the knowledge of the
 4 law that would enable them to determine whether [defendant’s actions] had been wrongful.” *Id.* at 1097.

5 **C. The Undisputed Material Facts Demonstrate That The Vast Majority Of Plaintiffs’
 6 Claims Are Time-Barred.**

7 Undisputed evidence establishes that the vast majority of the claims asserted here accrued before
 8 May 2012 and are therefore time-barred. Indeed, before May 2012 most of these plaintiffs had already
 9 filed, *for the very same injuries at issue here*, workers’ compensation claims seeking recovery from their
 10 employer clubs and/or applications to the NFL’s collectively-bargained disability plan. Many were
 11 represented in doing so by plaintiffs’ counsel here. And all have acknowledged in sworn testimony that
 12 they experienced prior to May 2012 pain in the same body parts about which they complain here.

13 For the convenience of the Court, the discussion below divides the plaintiffs into two groups:
 14 those whose claims were accepted as sufficiently pled in the February 3 Order (the pleading of which is
 15 accordingly not challenged in this Motion) and those that were dismissed previously. As demonstrated
 16 in Part I above, the latter should simply be dismissed again, this time with prejudice. However, if the
 17 Court determines that any of those claims have been sufficiently pled, the second subsection below
 18 explains why those claims are barred by the statute of limitations.

19 **1. Claims That Survived the Prior Motion To Dismiss**

20 As in analyzing the pleading deficiencies of the SAC, application of the statute of limitations is
 21 properly considered on a plaintiff-by-plaintiff, defendant-by-defendant basis.

22 **Ashmore** specifically alleged that in 1998, the Raiders pressured him to play despite a wrist
 23 injury, that he received medication to enable him to do so, and that his wrist is now permanently
 24 damaged. February 3 Order at 14. But the SAC concedes that Ashmore had pain in that wrist beginning
 25 in 1998 and continuing for the remainder of his career, admitting that the injury was incurred – and that
 26 his cause of action accrued – well before May 2012. (SAC ¶ 269.) At deposition, he confirmed that his
 27 wrist has been damaged, and has caused him pain, ever since his time with the Raiders, which ended in
 28 2001. (Block Dec. Ex. 14 at 177:19-179:21.)

1 The SAC also avers that Ashmore “is now in constant pain in his neck, shoulders and knees,”
 2 (SAC ¶ 262) although it offers no particularized allegations tying those alleged injuries to any wrongful
 3 conduct by any defendant. Even if any claims relating to those injuries had been sufficiently alleged
 4 against any defendant, they would still be time-barred. Ashmore testified that he has experienced pain in
 5 his neck, shoulders, and knees ever since retiring from the NFL in 2001. (Block Dec. Ex. 14 at 177:19-
 6 179:21.) Represented by the same counsel representing him here (Mr. Owens), he filed a workers’
 7 compensation claim in 2004 related to his “neck” and another claim in 2008 for “[a]ll body parts,”
 8 (Block Dec. 15 at 696, 840; Block Dec. 16 at 232) including the same ones he complains about here.
 9 (Block Dec. Ex. 14 at 222:10-228:4, 259:1-260:7.) A 2010 medical examination in connection with
 10 that filing confirmed that he was then experiencing pain with all of these body parts. (Block Dec. Ex.
 11 16.) The SAC also alleges that Ashmore’s “kidneys may be damaged because a blood test revealed that
 12 his kidneys were leaking protein.” (SAC ¶ 262.) Again, there are no particularized allegations tying that
 13 alleged injury to wrongful conduct by any defendant, but if even if there were, that blood test occurred
 14 in 2009 as part of a medical examination for a life insurance application. (Block Dec. Ex. 14 at 180:9-
 15 182:22, 258:16-263:1, Ex. 16 at 233, 248.) Accordingly, regardless of the adequacy of pleading, any
 16 claims relating to these alleged injuries are time-barred.

17 **Wunsch** has specifically alleged that the Seahawks pressured him to play in a 2003 game despite
 18 excruciating pain and that he received medication from the team to do so, resulting in his now suffering
 19 from “constant joint and nerve pain.” February 3 Order at 15. At deposition, Wunsch testified that his
 20 “whole body [has been] in pain 24/7” ever since he left the NFL in 2004. (Block Dec. Ex. 17 at 215:7-
 21 11.) In 2010, Wunsch filed a disability claim with the NFL related to, *inter alia*, forty different
 22 conditions including “joint pain” and “numbness in all extremities and shooting pain” (along with pain
 23 in his shoulder, elbow, thumb, fingers, ribs, hip, thigh, calf, achilles, ankle, feet, neck, lower back,
 24 forearm, center chest, loss of mobility, cyst, disc degeneration, sleep apnea, Crohn’s Disease, TMJ, and
 25 ringing in his ears). (Block Dec. Ex. 18 at 201-03.) That disability claim, in turn, followed a 2009
 26 California workers’ compensation claim filed by Wunsch, represented by his counsel here (Mr. Owens),
 27 related to his “head, neck, back, spine, shoulders, hips, elbows, hands, wrists, legs, ankles, knees, feet,
 28 internal, ENT/TMJ, neuro/psyche, hearing, vision, sleep, [and] chronic pain.” (Block Dec. Ex. 19 at

1 1942; *see also* Block Dec. Ex. 17 at 210:1-215:17, 223:15-227:3, 230:5-25.) Based on these undisputed
 2 facts, any such claims in this proceeding are accordingly time-barred.¹⁰

3 **Harris** has specifically alleged that he suffered sprained ligaments in his ankle while playing for
 4 the Dolphins, that he received a cortisone injection to play, and that he is now in “constant pain from all
 5 of his joints” including his ankles. February 3 Order at 15. At deposition, Harris confirmed that he has
 6 had pain and swelling in his joints for a very long time. Indeed, in the period before 2012 he had joint
 7 swelling, as well as back pain, knee pain, fatigue, high cholesterol, spondylosis (arthritis of the lower
 8 back), shoulder pain, and obesity. (Block Dec. Ex. 20 at 209:7-22, 210:21-211:1, 213:2-22, 214:11-18,
 9 216:12-14, 217:6-9, 218:14-18, 219:24-220:4, 268:8-10, 270:21-271:7). Harris filed workers’
 10 compensation claims related to these orthopedic issues in 1992. (Block Dec. Ex. 21 at 97-99.) Based on
 11 these undisputed facts, all claims relating to the muscular/skeletal injuries he alleges in the complaint
 12 (“pain from football injuries in his neck, back, hands, shoulders, knees, and ankles” and “arthritis in his
 13 fingers” (SAC ¶ 253)) are time-barred.¹¹

14 **Graham** has specifically alleged that he suffered a broken traverse process in his back while
 15 playing for the Chargers in 2000, that, due to pressure from the team, he continued to play by taking
 16 medications, and that he “now lives in constant pain.” February 3 Order at 15-16. But in April 2009,
 17 Graham applied for NFL disability benefits related to his lower back and traverse process, which were
 18 “still causing pain and stiffness.” (Block Dec. Ex. 22 at 3566; *see* Block Dec. Ex. 23 at 303:2-305:13,
 19 306:17-307:18). In that same application, Graham also sought disability benefits related to his neck,
 20

21 ¹⁰ The SAC also avers that Wunsch “currently suffers” from “an enlarged liver, a damaged pituitary
 22 gland, stomach problems and other endocrine issues.” (SAC ¶ 274.) But no claim relating to these
 23 conditions is pled with particularity. In any event, Wunsch testified that he has suffered from Crohn’s
 24 Disease since 2009, and this claim was part of his 2010 workers’ compensation filing. (Block Dec. Ex.
 17 at 103:6-104:2; Ex. 18 at 202-03.)

25 ¹¹ Harris also alleges issues with his heart, but the SAC concedes that they are related to the cardiac
 26 issue of which he was aware when he played in the 1980s. (SAC ¶ 253.) The SAC also alleges that
 27 Harris has had thyroid surgery and that, since his deposition in this case, he has received “laboratory
 28 results that showed a large spike in his kidney creatine levels” (*Id.*) But Harris has offered no factual
 allegations purporting to tie these conditions to any misrepresentation or concealment by any defendant.

1 shoulders, ankles, knees, hips, feet, hands, wrist, gastric syndrome, and hearing and balance. (Block
 2 Dec. Ex. 22 at 3566.). And in a February 2008 deposition in a workers' compensation case, Graham,
 3 represented by his counsel here (Mr. Byrne) testified that he was suffering from pain in his shoulders,
 4 knees, hips, lower back, hands, legs, and toes. (Block Dec. Ex. 24 at 66:11-68:25, 69:9-21, 73:21-74:17,
 5 76:7-79:3, 79:19-22, 80:22-81:6; *see also* Block Dec. Ex. 23 at 259:23-261:11.) Accordingly, based on
 6 these undisputed facts, Graham's claims – which are only for "muscular/skeletal injuries" (SAC ¶ 37) –
 7 further described as "pain in both shoulders, neck, hips, lower back, both elbows, both hamstrings, his
 8 fingers, wrists, left toe and right knee" (*id.* ¶ 251) – are time-barred.

9 **Killings** specifically alleged that he sprained an ankle while practicing with the Vikings in 2003
 10 and that, due to pressure from the head coach, he took medications so that he could continue to practice,
 11 and that he now "has constant pain in his ... ankles." February 3 Order at 16. At deposition, Killings
 12 admitted that he has had this constant pain – including "in his back, shoulders, knees, ankles and hands"
 13 (SAC ¶ 258) – since he retired from football in 2007. (Block Dec. Ex. 25 at 329:14-330:3, 331:14-332:6,
 14 346:9-347:10). In 2008, Killings filed a workers compensation claim relating to these same conditions.
 15 (*Id.* at 324:14-326:15; Block Dec. Ex. 26 at 102.) The SAC also alleges that, "after retiring from
 16 professional football, Mr. Killings also experienced an inflamed gall bladder, which necessitated the
 17 removal of the entire organ in emergency surgery." (SAC ¶ 258.) Leaving aside that Killings has not
 18 pled with particularity any claim related to his gall bladder, that surgery occurred in 2010. (Block Dec.
 19 Ex. 25 at 336:6-338:6, Ex. 27 at 11:6-11.) Accordingly, Killings' claims are time-barred.¹²

20 **Massey** specifically alleged that the Lions had pressured him to play despite an ankle injury, that
 21 the club gave him medication to do so, and that he now has constant pain in his ankles. February 3
 22 Order at 14. He now makes similar allegations against the Saints. (*See* n. 3 above.) But at deposition,
 23

24 ¹² Killings also alleges that he was recently diagnosed with hypertension (SAC ¶ 258.) The SAC offers
 25 no allegations tying that condition to any misrepresentation or concealment by any defendant. Insofar as
 26 plaintiffs seek to rest on the general allegation that hypertension is a of muscular/skeletal pain (SAC ¶
 27 199), any such claim would also be time-barred. *See, e.g., Morris v. Minn. Mining & Mfg. Co.*, 2015
 28 WL 1757465, at *4-5 (D. Md. Apr. 16, 2015) (claims for "progressive" injuries accrue at the first
 instance of harm; statute of limitations is not tolled for symptoms that progress or worsen over time).

1 Massey confirmed that he has had ankle pain ever since he stopped playing football in 1998. (Block
 2 Dec. Ex. 28 at 256:11-256:19; *see also id.* 255:15-22 (stating that he also had knee pain ever since he
 3 stopped playing football).) He further confirmed that he has been unable to exercise regularly since
 4 2010 because of his ankle issues, a fact that he then attributed to injuries sustained while playing in the
 5 NFL. (*Id.* at 259:6-260:5.) Massey filed for NFL disability benefits related to his ankle (and other body
 6 parts) in 1999. (Block Dec. Ex. 29 at 3515.) And in 2009, Massey filed a workers' compensation claim
 7 related to his NFL injuries, including his ankle; he received an award for that claim in 2011. (Block
 8 Dec. Ex. 28 at 267:18-270:7, Ex. 30 at 4, 6, Ex. 31 at 82.) Accordingly, those claims are time-barred.¹³

9 **Carreker.** In addition to his “resistance” to medication claim,¹⁴ Carreker seeks to recover for
 10 “gouty arthritis” and “constant pain in his neck, back, ankles, knees and shoulders,” although the SAC
 11 offers no particularized allegations indicating that those conditions were proximately caused by any
 12 misrepresentation or concealment by any defendant. (SAC ¶ 255.) Those claims are time-barred as a
 13 matter of undisputed fact. Carreker was diagnosed with gouty arthritis in 2008. (*Id.*) And at deposition
 14 he testified that he has had pain in his neck, toe, hands and knees since he stopped playing football in
 15 1991. (Block Dec. Ex. 32 at 210:15-211:14, 212:3-213:18; 216:4-18, 227:19-228:11, 229:8-230:1,
 16 276:17-279:16.) In 2004, he filed a disability claim with the NFL related to these conditions. (*Id.* at
 17 269:8-270:14, 275:20-282:10; Block Dec. Ex. 33 at 203, 206-07.) In 2009, represented by the same
 18 counsel representing him here (Mr. Owens), he also filed a workers' compensation claim related to these
 19 injuries. (Block Dec. Ex. 32 at 298:13-299:24; Ex. 34 at 161, 163.)

20 **2. Plaintiffs Who Have Failed To State a Claim With Particularity**

21 Should the Court determine that any of the newly amended claims are sufficiently pled, most
 22 should similarly be subject to summary judgment on statute of limitations grounds.

23
 24 ¹³ In Paragraph 21, the SAC alleges that “the only injuries of which [Massey] is aware are kidney
 25 damage and the muscular/skeletal injuries discussed above.” But no kidney damage is discussed
 26 “above” – or, for that matter “below,” and the SAC purports to offer no allegations indicating that he
 27 suffered kidney damage proximately caused by any wrongful conduct of any defendant.

28 ¹⁴ Further discovery is needed regarding the timing of this diagnosis, as well as on the (highly dubious)
 proposition that a person can build up “resistance” to anti-inflammatories.

1 There can be no question that the statute of limitations would bar any claim brought by Etopia
 2 **Evans**, as her husband Charles died in 2008. (See SAC ¶ 248.) There is no conceivable argument that
 3 she could offer about a “latent” injury to him that emerged only after May 2012.

4 **Goode** alleges that he “suffers from numbness in his arms and legs and constant pain in his neck,
 5 back, elbows, wrists, feet, knee and ankle.” (SAC ¶ 259.) Goode testified at deposition that he has
 6 experienced this numbness and pain on a recurring basis ever since his playing career ended in 1993.
 7 (Block Dec. Ex. 35 at 162:21-164:7; Block Dec. Ex. 36 at 72:18-23; 73:2-10; 73:24-25; 74:4-8; 75:2-4;
 8 75:8-10; 75:23-76:1; 76:10-15; 89:22-90:11.) Represented by the same counsel representing him here
 9 (Mr. Owens), Goode filed (and later settled) a workers’ compensation claim related to these injuries in
 10 2008. (Block Dec. Ex. 37 at 12-13; *see also* Block Dec. Ex. 36 at 100:3-101:9; Block Dec. Ex. 38.)
 11 Accordingly, Goode’s claims based on muscular/skeletal injuries, even if pled adequately, would be
 12 time-barred.¹⁵

13 **King** alleges that he “now lives with constant pain” and that the “same left forearm and shoulder
 14 and back that were ‘fixed’ by Club doctors bring pain to [his] daily life.” (SAC ¶ 249.) But at
 15 deposition, King admitted that he has had pain in his forearm, shoulder, and back since 2010, when he
 16 stopped playing football in the NFL. (Block Dec. Ex. 40 at 310:6-312:7, 322:24-323:4.) In 2011 and
 17 February 2012, King filed workers’ compensation claims related to these injuries in Michigan and
 18 California. (*Id.* at 330:2-9; Block Dec. Ex 41.) Claims based on these injuries would therefore be time-
 19 barred even if they had been pled with particularity against any defendant.

20 **Lofton** alleges that he “currently lives with intense pain every day. His back, neck, shoulders,
 21 elbow, wrists, hands, and hips constantly hurt. He has limited ability to exercise and has recently
 22 developed pain in his knees and the lower part of his legs.” (SAC ¶ 246.) Lofton filed a workers’
 23

24 ¹⁵ Goode also alleges that he was diagnosed with kidney cancer in 2014. The SAC does not allege that
 25 *cancer* is caused by any of the medications about which plaintiffs complain or by any misrepresentation
 26 or concealment by any defendant. (See SAC ¶¶ 197-211.) The SAC also says that “[j]ust last week”
 27 Goode “began experiencing new complications related to his kidneys” (SAC ¶ 259); but Goode was
 diagnosed with kidney deficiency in 2010. (Block Dec. Ex. 39 at 40-41; *see also* Block Dec. Ex. 36 at
 117:2-118:13.)

1 compensation claim in October 2010 for these same ailments. (Block Dec. Ex. 42 at 174:21-179:17;
 2 181:21-183:18; *see also* Block Dec. Ex. 43 at 842.) Lofton also filed a disability claim with the NFL in
 3 2011 related to his cervical and lumbar spine, knees, shoulders, ankles, feet, and wrists. (Block Dec. Ex.
 4 44 at 28). Accordingly, Lofton’s claims based on alleged muscular/skeletal injuries are time-barred.¹⁶

5 **Sadowski** alleges that he “lives with constant pain in his back, hips, wrists, knees, ankles, and
 6 shoulders,” and that his “weight is increasing due to his inability to exercise.” (SAC ¶ 247.) But
 7 Sadowski testified at deposition that he has had this pain ever since he retired. (Block Dec. Ex. 45 at
 8 237:22-238:14.) In 2009, represented by the same counsel representing him here (Mr. Owens),
 9 Sadowski filed a workers’ compensation claim against each team for which he had played related to his
 10 head, neck, upper extremities, leg, and “multiple” other ailments. (Block Dec. Ex. 46 at 38, 44-46; *see*
 11 *also* Block Dec. Ex. 45 at 281:17-285:15.) In a 2008 deposition in an earlier workers compensation
 12 proceeding, Sadowski testified that he had “pain in my shoulders, my neck, middle back, lower back,
 13 through the upper chest area I get pain when I sit in a fixed position through my hips, down into my
 14 legs, my knees, pain in my – the top part of my foot down into my toe, mostly big toe.” (Block Dec. Ex.
 15 47 at 42:19-43:8.) Again, therefore, based on these undisputed facts, Sadowski’s claims would be time-
 16 barred even if he had pled them with particularity.

17 **D. Any Claims for Medical Monitoring Are Also Time-Barred.**

18 To the extent that any plaintiff (other than Walker) contends that his injury is “a substantially-
 19 increased risk” of developing *future* musculoskeletal or internal organ injuries (*see, e.g.*, SAC ¶ 320),
 20 any such claim would also be time-barred. Even if such a remedy were available under the applicable
 21 state substantive laws, the procedural limitations question, governed by Maryland law, would be the
 22 same. Any “increase” to the risk of developing ailments later in life based on medications taken while
 23

24 ¹⁶ The SAC avers that “at this time, the injuries of which [Lofton] is aware are damage to his internal
 25 organs and the muscular/skeletal injuries discussed above.” (SAC ¶ 33.) But no organ damage is
 26 discussed “above” (or “below”) and there are no allegations of proximate causation of any “organ”
 27 damage to Lofton caused by any misrepresentation or concealment by any defendant. If this was
 28 intended to refer to the elevated creatinine levels that Lofton testified to at his deposition, undisputed
 evidence establishes that that diagnosis occurred in 2009 or 2010. (Block Dec. Ex. 42 at 186:16-187:6.)

1 playing football necessarily occurred and accrued while plaintiffs were playing football and ingesting
 2 the medications. Those careers ended prior to May 2012 and any such claims are therefore time-barred.
 3 *See, e.g., Exxon Mobil Corp. v. Albright*, 71 A.3d 30, 75-76 (Md. 2013), *reconsideration granted in part*
 4 *on other grounds*, 71 A.3d 150 (Md. 2013) (“[E]xposure itself and the concomitant need for medical
 5 testing is the compensable injury”) (citation omitted).

6 CONCLUSION

7 For the reasons stated above, nearly all of the claims that this Court previously found to be
 8 insufficiently pled remain insufficiently pled, and most of those claims, as well as the remaining claims,
 9 are time-barred. The Court should accordingly enter an order granting dismissal and summary judgment
 10 as reflected in the proposed order filed herewith.

11 DATED: March 15, 2017

12 Respectfully submitted,

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